

**BEFORE THE WATER QUALITY CONTROL COMMISSION
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:
THE PETITION FOR REVIEW OF
ALDEBARAN ENTERPRISES
A/K/A TAOS COUNTRY CLUB CASITAS,
Petitioner.

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Decision and Order

THIS MATTER was before the New Mexico Water Quality Control Commission ("Commission") for review and decision on November 12-13, 2002. The Commission heard testimony and reviewed exhibits admitted into evidence. After considering the entire record, the Commission enters the following decision and order:

Findings of Fact

Procedural Findings

1. On or about May 20, 2002, the Ground Water Quality Bureau of the Environment Department ("Department") informed Aldebaran Enterprises ("Petitioner") that it needed a discharge permit for its proposed project. See Department's Exhibit 2.
2. On or about June 13, 2002, Stephen Natelson, counsel for Petitioner, filed a notice of appeal of this determination pursuant to 20.6.2.3112(B) NMAC. See Department's Exhibit 2.
3. On or about August 13, 2002, the Commission set a October 1, 2002, hearing date.
4. On or about August 19, 2002, Mr. Natelson filed a Verified Amended Appeal Petition. See Department's Exhibit 2.
5. On or about September 5, 2002, Paul Ritzma, counsel for Department, filed a Response to Appeal Petition. See Department's Exhibit 2.

6. On or about September 20, 2002, Mr. Natelson filed a Motion to Vacate and Continue the October 1, 2002, hearing. The motion included a waiver of the ninety (90) day hearing requirement found in WQCC Regulation 20.1.3.201(A) NMAC. See Department's Exhibit 2.
7. On or about September 23, 2002, Mr. Natelson filed a Supplement to its September 20, 2002, Motion to Vacate and Continue the Hearing. See Department's Exhibit 2.
8. On or about October 1, 2002, the Department orally did not oppose the Motion to Vacate and Continue the hearing.
9. On or about October 1, 2002, Hearing Officer John D'Antonio and Commission granted the Motion to Vacate and Continue the Hearing.
10. The Commission re-set the hearing for November 12, 2002.
11. On or about November 12-13, 2002, a hearing in the above-captioned matter was held.
12. On or about November 13, 2002, a quorum of the Commission reached a decision reflected in this order.

Substantive Findings

1. The Department presented evidence that a discharge permit under 20.6.2.3104 NMAC was required. See Department's Exhibits 1, 2.
2. The Commission's regulations state: "sewer system means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal." 20.6.2.7(PP) NMAC.

3. The Commission's regulations state: "sewerage system means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems." 20.6.2.7(QQ) NMAC.
4. The Commission's regulations state: "[N]o person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary." 20.6.2.3104 NMAC.
5. The Commission's regulations state that a discharge permit is not required when "effluent which is discharged from a sewerage system used only for disposal of household and other domestic waste which is designed to receive and which receives 2,000 gallons or less of liquid waste per day." 20.6.2.3105(B) NMAC.
6. Petitioner will discharge effluent or leachate so that it may move directly or indirectly into ground water and therefore must obtain a Ground Water Discharge Permit pursuant to Section 20.6.2.3104 of the Water Quality Control Commission Regulations. See Department's Exhibits 1, 2.
7. Petitioner's discharge is not exempt from the Water Quality Control Commission Regulations pursuant to Section 20.6.2.3105(B) because the discharge to the "sewerage system" will exceed 2,000 gallons per day. See Department's Exhibits 1, 2.
8. A plain meaning reading of "sewerage system" supports the Department's position.
9. Petitioner failed to present a preponderance of evidence it was exempt from a discharge permit under 20.6.2.3105(B). See Petitioner's Exhibits 1-4.

Conclusions of Law

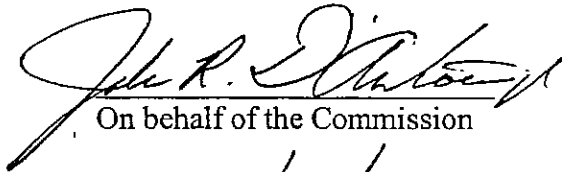
1. The Commission has jurisdiction over Petitioner, the subject matter of this proceeding, and complied with all notice and other procedural requirements governing the Commission's actions. See NMSA 1978, § 74-6-5(O), (P) (2000) and 20.1.3.100-.702 NMAC.
2. The Commission may take action to deny Petitioner's petition to review Department's determination.

Order

Based upon these Findings of Fact and Conclusions of Law, a quorum of the Commission renders the following decision and order:

IT IS THEREFORE ORDERED that:

1. Petitioner's petition is denied.


On behalf of the Commission

Date: 12/23/02